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Colonel John Rice his C A S E.

ON the Surrender of *Limerick*, the 3d Day of *October*, 1691, Col. *John Rice* (having then the Command of a Regiment of Horse in the *Irish Army*) did reject the Offers made him by the *French* Generals, to carry the said Regiment into *France*; but upon the Publick Faith and Assurances given him, by the General of the Army of their late Majesties, King *William* and Queen *Mary*, that the said Regiment should be receiv'd into the *English* Service, and paid and provided for, according to and upon the *English* Establishment, so long as any other *English* Regiments were kept on foot, he the said Colonel did bring the said Regiment over into the said Service of their said late Majesties, and to induce his Officers to joyn with him, in so doing he did give them a Bond in the Penalty of 10000 *l.* that they should be receiv'd, continu'd and provided for accordingly, and that they should be paid for their Horses and Arms, if taken from them, without which Security the said Officers would have carried their several Troops into *France*, as by the Capitulations made upon the Surrender of *Limerick* they were at liberty to do; and thereon the said Regiment was received into the Service of their said late Majesties, and continued therein from the said 3d Day of *October*, 1691. to the last Day of *January* following, when the said Regiment was by Order of the then Lords Justices of *Ireland* broke by Brigadier *Villiers*, and their Horses, Arms and Accoutrements taken from them for the Publick Service, to make up and recruit other Regiments of Horse, and the Horses, Arms and Accoutrements of Col. *Rice's* own Troop were by the said Brigadier *Villiers* valued at 1060 *l.* and the Horses, Arms and Accoutrements of five other Captains Troops of the said Regiment were valued at 900 *l.* a Troop, and the said Brigadier *Villiers*, at breaking the said Regiment, gave the said Col. *Rice* the following Certificate.

By the Right Honourable Col. *Fitz Gerald Villiers*, Brigadier-General of their Majesties Forces, and one of their Majesties most honourable Privy-Council of *Ireland*.

I Do hereby certify, That pursuant to a Commission from the Lords Justices of *Ireland* for that purpose, I have this Day disbanded Col. *John Rice* with the Regiment of Horse under his Command; and for their Majesties Service have seized fifty and three choice Geldings and Mares of the said Col. *Rice's* Property, with their Accoutrements worth 20 *l.* a Piece one with another which composed his Troop: And I do further certify, That the said Col. *Rice*, and the Officers under his Command, did shew all due Obedience and Loyalty to their Majesties; and particularly the said Col. *Rice*, by his exemplary taking the Oath of Allegiance, thereby obliging his said Regiment to do the like, at the same time exhorting them publicly to continue steadfast in the Loyalty then then profess'd, and that he did not doubt but their Majesties should provide for them; so that he left nothing undone for their Majesties Service in that behalf, which may intitle him to their Majesties particular Favour, as a Man of Honour, Conduct and Loyalty: All which I cannot without Injustice omit to certify this last Day of *January*, 1691.

Fz. Villiers.

The said Col. *Rice* being in pursuance of the said Bond, obliged to pay and make Satisfaction to the Officers and Soldiers of the said Regiment for their Pay, and likewise for their said Horses, Arms and Accoutrements, he did by Arbitration and the Mediation of Friends prevail with the respective Captains of the said five Troops to accept of 450 *l.* apiece, for the Horses, Arms and Accoutrements of their said respective Troops, which with the full Pay of the said Regiment, according to the *English* Establishment, the said Col. *Rice* did satisfy, and thereupon all the Captains of the said Regiment, by their Deeds dated the 15th of *April*, 1692. acknowledged themselves to be fully paid all their Pay, and for their Horses, &c. release the Colonel of the Bond, and give him full Authority to receive the Money due for their Horses, &c. to his own use.

Release and
Letter of Attor-
ney, 15 Apr. 92.

1696: By an Account stated by the Commissioners, appointed by his said late Majesty King *William*, for stating the Accounts of the Army in *Ireland*, the Sum of 8110 *l.* 17 *s.* 6 *d.* is stated and certified to be due to the said Regiment for Arrears of Pay (over and besides the 450 *l.* apiece by him the said Colonel, paid for the Horses, Arms and Accoutrements of the said five Troops) which, with the said 1060 *l.* so ascertained to be the Value of the said Colonel's own Troop, amounts to 3310 *l.* which together with the aforesaid 8110 *l.* 17 *s.* 6 *d.* makes in all 11420 *l.* 17 *s.* 6 *d.* principal Money.

The Colonel did the last Session of the last Parliament, in order to obtain Satisfaction for this Money, petition the House of Commons, and the House referred the Petition to a Committee, which upon full Proof made before them of the Matters of Fact, made a Report, wherein the Colonel's Service, in bringing over the Regiment, &c. are enumerated, and the Debt due to him in the Right of the Regiment stated, whereupon a Clause for his Relief was incerted in the Bill to prevent Mutiny and Desertion; which Clause, together with some other Clauses of the like Nature were rejected in the House of Lords, not upon account (as was given out) of the Subject-Matter of them, but because they were foreign to that Bill.

In this Clause the Colonel had not Credit for the Money due for his own Troop-Horses, or the Horses of the other five Troops, the Colonel being perswaded not to apply for it then, for that there were sixteen Petitions for Army Debtors then depending in the House, eight of which failed in their Proof before the Committee, the House rejected four more, and four more (of which the Colonel's was one) succeeded in the House of Commons, but the Clauses were rejected by the Lords.

During the time that this Clause was in, in passing the House of Commons, there were some Reflections made upon the Colonel, whereby to diminish his Title to the Relief he sought for, As that one Col. *Corbet* was instrumental in bringing over the Regiment, &c. Whereupon

The present Petitioner against the Colonel and the rest of the Captains of the Regiment, by a Deed of that Date, under their Hands and Seals, certified the said Col. *Rice's* bringing them over, and that he had honourably paid them both their Pay and for their Horses in manner aforesaid; and that the said Col. *Corbet* left the *Irish Army* before the Capitulation of *Limerick*, and never after appeared in it; and that he did not in any wise appear for, or with them, on their going over, nor make any Application to them, but was wholly unconcerned, and then conclude in these Words, All which, out of a Sense of Justice, and of the said Col. *Rice's* Loss and Sufferings on our Accounts, we have thought our selves obliged thus to certify, and when required, shall be ready to make Oath of the same.

The

which they refused to do, conceiving they had not Power by the said Act so to do, alledging the Petitioner's Regiment was not upon the Establishment, altho' he produced to them Sir *Edward Northey*, her Majesty's Attorney General, his Opinion in Writing, under his Hand, on the State of his Case, with this Quere at the Foot of it, viz.

Quere.

The last Sessions of this Parliament, the Col. again applyed to the House of Commons, by Petition, which being referred to a Committee, they made another Report on his behalf, of the same Substance with the former, and a Bill was thereupon ordered to be brought in, to give him Debentures for 8110 l. 17 s. 6 d. for the Pay of the Regiment, for 1060 l. for the Horses, of the Col. own Troop, and 450 l. for each of the other five Troops, making in all 11420 l. 17 s. 6 d. which Bill passed into an Act of Parliament. After the passing of this Act, viz.

The Present *Peter O. Bryan*, and *Sir Thomas Pendergrafs* one of the Captains, reciting the former Discharge, of the 15th, of April, 1692. And the Cols. Act of Parliament, fully Release the Col.

The Col. hath Letters from his Agent in *Ireland*, that the rest of the Captains have likewise Executed a Release to him, to the same purpose, and that the same will be sent over by the first safe Conveyance.

Morgan O. Bryan on the behalf of himself, and of two other Captains of the Regiment, and by an Authority from them, as they pretend, Petitioned the House of Commons, setting forth, that they have a Copy of a Letter writ by the Col. in 1702, to one *Rawleigh* in *Ireland*, whereby *Rawleigh* is directed to procure the Petitioner, to Release and to date the Releases when Executed, and to give Notes for any moderate Sum of Money to them, by which Letter (the Original whereof they alledge *Rawleigh* hath by him) and some other Letters, the Petitioners pretend that the Releases were given for a Colour only, and upon a Trust, that the Col. should notwithstanding Account with them, and give them Satisfaction, upon which Petition a Bill was ordered to be brought in, to oblige Col. *John Rice* to Account for Debentures, granted him the last Sessions of Parliament, and to subject his Person and Estate, for the payment of the same.

A Bill is brought in accordingly, whereby Col. *Rice* is charged with the 11420 l. 17 s. 6 d. and obliged to Account for the same, according to the course of the Exchequer, and the 11420 l. 17 s. 6 d. is made a Debt upon him, to the Crown, in the nature of a Statute Staple, and the Debentures, and the produce of them, and whatsoever the same have been converted into, are vested in the Crown; to the intent that the Debentures may by the Direction of the Lord Treasurer, be disposed of, towards payment of what shall appear due, to the Officers and Soldiers of the Regiment, and in case nothing be due to them, then to be applied to the payment of the Arrears, due to any other Regiment, with a Reward to any Person who shall discover any of the Debentures, or what they have been converted to, and a Penalty upon any Person who shall conceal them, and that Col. *Rice* shall continue in Prison, until the Account and Satisfaction to be made, with a saving to the right of any Person, who shall appear *Bona fide*, to have purchased any of the Debentures, or lent Money upon them, before the Day of with a Direction, that where they shall appear to be Mortgaged, only the Lord Treasurer may order them to be sold, to satisfy the Mortgage Money, and the Surplus to be to the use of the Crown.

Colonel Rice doth Object to this Bill,

- (1.) That the Act of Parliament passed last Session, for his Relief was grounded upon good Reason, viz. the Service by him done, in bringing over the Regiment, and hindering them from going into *France*, which alone might merit the Value of these Debentures, and the Justice of the Debt due to him, all which he is ready still to prove, not only by making out all the Matters herein before enumerated; but likewise by a Report and Letter, under the Hand of the Right Honourable the Lord *Coningsby*, whereby the Cols. Service, and the Debt due to the Regiment are attested.
- (2.) That the Petitioner for this Bill, and the other Officers have been satisfied their demands, and even since the Act of Parliament Released them, and that the Letter pretended to be Writ to *Rawleigh*, is in truth a Forgery, no such having been Writ by the Col. ~~which probably by the Direction of the said Petitioner, was a Copy only.~~
- (3.) That in case what the Petitioners pretend to, were true, That the Releases were given upon Trust only yet in that case, the ordinary Course of Justice can relieve them, where (it is humbly conceived) their Application would be most proper, for upon their making out their case to be as they set it forth, the Releases would be set aside, and the Colonel ordered to pay them, but with an Allowance to be made him for his charges, and fifteen Years soliciting of this Business both in *Ireland* and *England* which would amount to near the Value of the Debentures.
- (4.) Besides, it is very extraordinary by a Law, *ex post facto*, to subject a Man's person and Estate to the accounting for a Sum of Money receiv'd by Act of Parliament, and that in Debentures only, for if the Parliament had thought it necessary that an Account should be taken, they would have directed one in the Bill, whereby they gave the Debentures, and the charging him with the Money as a Debt to the Crown, in the Nature of a Statute Staple, is an Injury to his other Creditors; for by this Means, this new Debt to the Crown made so by Act of Parliament, will be preferred to any other Debt he may have contracted by Specialty or otherwise, before the Act which is a manifest Injury to them Creditors who lent him their Money upon the Credit of his then visible Substances, and yet they will be now postpon'd by Act of Parliament.
- (5.) It will be an Injury to all Persons concerned in Army Debentures, for as these Debentures are endeavoured to be recalled, or at least to have the Currency of them stopped by Act of Parliament, it may upon other Applications, happen to be the case of other Debentures, which will in all probability very much Prejudice the Publick Credit.

For all which Reasons it is humbly hoped, the said Bill now depending in the House of Commons, will not pass.